

AMENDED IN ASSEMBLY AUGUST 10, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 11, 2006

SENATE BILL

No. 1414

Introduced by Senator Migden

~~(Coauthor: Assembly Member Klehs)~~

February 22, 2006

An act to add Part 8.6 (commencing with Section 2100) to Division 2 of the Labor Code, and to add Chapter 8.9 (commencing with Section 14800) to Part 3 of Division 9 of the Welfare and Institutions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1414, as amended, Migden. California Fair Share Health Care Act.

Existing law generally regulates the conduct of employers and employees in the state and gives the Department of Industrial Relations various responsibilities in this regard, including levying and collecting assessments from employers to provide revenue to fund certain activities related to employment matters, such as workers' compensation and occupational safety.

Existing law establishes the federal Medicaid Program, which is administered by each state. California's version of this program is the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care benefits.

Existing law provides for the Healthy Families Program, administered by the Managed Risk Medical Insurance Board, to

arrange for the provision of health care services to children under 19 years of age.

Existing law establishes the Access for Infants and Mothers (AIM) Program, administered by the Managed Risk Medical Insurance Board, to provide health insurance coverage for certain eligible persons who pay a subscriber contribution.

This bill, the California Fair Share Health Care Act, would require an employer with 10,000 or more employees in the state, who does not elect to contribute, in support of the Medi-Cal program, the difference between the amount the employer spent on health insurance costs and an amount equal to a specified percentage of the total wages paid to employees in the state in the immediately preceding calendar year, to spend an amount equal to that specified percentage on employee health insurance costs, as defined.

This bill would impose civil penalties on an employer that fails to provide information or make payments as required by the bill.

The bill would create the California Fair Share Health Care Fund, which would be expended by the State Department of Health Services and the board, upon appropriation by the Legislature, for purposes of funding the services and operations of the Medi-Cal, Healthy Families, and AIM Programs. The fund would consist of payments, including the prescribed penalties, made to the Director of Industrial Relations by employers that fail to spend the amount required by the bill on employee health insurance costs, as defined. The bill would authorize the director to exempt an employer from the requirement to pay into the fund under certain circumstances.

This bill would require affected employers to file an annual report with the Director of Industrial Relations, including the total amount the employer spent on health insurance costs in the immediately preceding calendar year, and the corresponding percentage of nonexempt employee wages paid to employees that amount represents. The bill would require this report to be accompanied by an affidavit, signed under penalty of perjury, declaring that the information provided is true and correct. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would require the Director of Industrial Relations to adopt regulations to implement the bill, to annually contract for an independent certified audit of the financial activities of the fund, and to report the results of the audit to the Director of Health Services and the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the California Fair Share Health Care Act.

3 SEC. 2. Part 8.6 (commencing with Section 2100) is added to
4 Division 2 of the Labor Code, to read:

5
6 PART 8.6. CALIFORNIA FAIR SHARE EMPLOYER
7 HEALTH CARE ASSESSMENT
8

9 2100. For purposes of this division, the following terms shall
10 have the following meanings:

11 (a) "Director" means the Director of Industrial Relations.

12 (b) "Employee" means an individual who works for an
13 employer, is listed on the employer's payroll records, and is
14 under the employer's direction and control.

15 (c) "Employer" means every person, including any
16 corporation, that has any natural person in service. "Employer"
17 does not include the federal government, the state, any other
18 state, or a political subdivision of this state or any other state.

19 (d) "Health insurance costs" means the amount paid by an
20 employer to provide health care or health insurance to employees
21 and the dependents of these employees in the state, to the extent
22 deductible by the employer under federal tax law. "Health
23 insurance costs" includes payments for medical care, prescription
24 drugs, vision care, medical savings accounts, and any other costs
25 to provide health benefits, as defined in Section 213(D) of the
26 Internal Revenue Code.

27 (e) "Wages" has the same meaning as that term is defined in
28 Section 200.

1 2102. This division applies to an employer with 10,000 or
2 more employees in the state.

3 2103. (a) An employer organized as a nonprofit organization,
4 unless it elects otherwise under Section 2106, shall spend at least
5 6 percent of the total wages paid to employees in the state in the
6 immediately preceding calendar year on employee health
7 insurance costs.

8 (b) An employer not organized as a nonprofit organization,
9 unless it elects otherwise under Section 2106, shall spend at least
10 8 percent of the total wages paid to employees in the state in the
11 immediately preceding calendar year on employee health
12 insurance costs.

13 2104. (a) An employer shall submit a report, on a form and
14 in a manner approved by the director, that includes the following
15 information:

16 (1) The total amount spent by the employer in the immediately
17 preceding calendar year on health insurance costs in the state.

18 (2) The percentage of payroll spent by the employer in the
19 immediately preceding calendar year on health insurance costs in
20 the state.

21 (b) The director shall adopt regulations that specify the
22 documentation an employer shall be required to submit in
23 support of the information provided pursuant to subdivision (a).

24 (c) The report required by this section shall be signed by the
25 employer's principal executive officer, or person performing a
26 similar function, and shall be accompanied by an affidavit,
27 signed under penalty of perjury, declaring that the information
28 provided pursuant to this section was reviewed by the signing
29 officer, and is true and correct, to the best of the signing officer's
30 knowledge, information, and belief.

31 (d) When calculating the percentage of payroll for purposes of
32 subdivision (a), an employer may exempt both of the following:

33 (1) Wages paid to any employee in excess of the amount
34 taxable for federal social security purposes.

35 (2) Wages paid to any employee who is enrolled in, or *who is*
36 eligible for, Medicare.

37 2106. (a) (1) An employer organized as a nonprofit
38 organization may elect to spend less than the amount otherwise
39 required by subdivision (a) of Section 2103 and instead pay the
40 director an amount equal to the difference between the amount

1 the employer spent on health insurance costs and an amount
2 equal to 6 percent of the total wages paid to employees in the
3 state in the immediately preceding calendar year.

4 (2) The director may exempt an employer from the
5 requirements of paragraph (1) if the director finds that the
6 amount spent by the employer in the immediately preceding
7 calendar year on health insurance costs per employee equals or
8 exceeds the average amount necessary to provide coverage,
9 based on applicable surveys of employer coverage.

10 (b) (1) An employer not organized as a nonprofit organization
11 that spends less than the amount required by subdivision (b) of
12 Section 2103 shall pay to the director an amount equal to the
13 difference between the amount the employer spent on health
14 insurance costs and an amount equal to 8 percent of the total
15 wages paid to employees in the state in the immediately
16 preceding calendar year.

17 (2) The director may exempt an employer from the
18 requirements of paragraph (1) if the director finds that the
19 amount spent by the employer in the immediately preceding
20 calendar year on health insurance costs per employee equals or
21 exceeds the average amount necessary to provide coverage,
22 based on applicable surveys of employer coverage.

23 (c) An employer shall not deduct any amount made pursuant
24 to this section from the wages of any employee.

25 (d) The employer shall make the payments required by this
26 section on a periodic basis, as determined by the director.

27 2108. (a) If an employer fails to make the report required by
28 Section 2104, the director shall impose a civil penalty of two
29 hundred fifty dollars (\$250) for each day that the report is not
30 submitted in a timely manner.

31 (b) If an employer fails to make the payments under an
32 election described in Section 2106, the director shall impose a
33 civil penalty of two hundred fifty thousand dollars (\$250,000).

34 2110. The director shall do all of the following to implement
35 this part:

36 (a) Annually verify which employers in the state have 10,000
37 or more employees.

38 (b) Ensure that all employers identified in subdivision (a) have
39 submitted the report required by Section 2104.

40 (c) Adopt regulations to implement this part.

1 (d) Pay the amounts collected pursuant to this part into the
2 California Fair Share Health Care Fund, created by Section
3 14800 of the Welfare and Institutions Code.

4 SEC. 3. Chapter 8.9 (commencing with Section 14800) is
5 added to Part 3 of Division 9 of the Welfare and Institutions
6 Code, to read:

7
8 CHAPTER 8.9. CALIFORNIA FAIR SHARE HEALTH CARE FUND
9

10 14800. (a) The California Fair Share Health Care Fund is
11 hereby created as a special account in the State Treasury.

12 (b) Money in the fund shall consist of both of the following:

13 (1) All payments and penalties collected from employers
14 pursuant to Part 8.6 (commencing with Section 2100) of Division
15 2 of the Labor Code.

16 (2) Any other money from any other source accepted for the
17 benefit of the fund.

18 (c) Upon appropriation by the Legislature, money in the fund
19 may be expended by the department and the Managed Risk
20 Medical Insurance Board, only for the purpose of funding
21 services and operations of the Medi-Cal program set forth in
22 Chapter 7 and following (commencing with Section 14000), the
23 Healthy Families Program set forth in Part 6.2 (commencing with
24 Section 12693) of Division 2 of the Insurance Code, and the
25 Access for Infants and Mothers Program set forth in Part 6.3
26 (commencing with Section 12695) of Division 2 of the Insurance
27 Code.

28 (d) The Treasurer shall invest money contained in the fund not
29 needed to meet current obligations in the same manner as other
30 public funds are invested. Interest that accrues from the
31 investments shall be credited to the fund.

32 (e) The Director of Industrial Relations shall annually contract
33 for an independent certified audit of the financial activities of the
34 fund. An annual report on the financial status of the fund as of
35 June 30 shall be submitted to the Director of Health Services and
36 the Legislature.

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the
2 penalty for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition of a
4 crime within the meaning of Section 6 of Article XIII B of the
5 California Constitution.

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